

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ADAM FERRARI,

Plaintiff,

v.

WILLIAM FRANCIS,

Defendant.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 3:23-CV-455

PLAINTIFF'S FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiff, Adam Ferrari ("Mr. Ferrari" or "Plaintiff"), files this First Amended Complaint and Jury Demand (the "Complaint") against Defendant William Francis ("Mr. Francis") and would respectfully show the Court as follows:

PARTIES, JURISDICTION, AND VENUE

1. Mr. Ferrari is an individual who resides in Orange County, California. Mr. Ferrari is a citizen of California.

2. Mr. Francis is an individual who resides in Dallas County, Texas, and may be served with process at his residence located at 15800 Spectrum Drive, Apt. 1432, Addison, Texas, 75001, or wherever he may be found. Mr. Francis is a citizen of Texas.

3. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and because all parties are citizens of different states.

4. This Court has personal jurisdiction over Mr. Francis because he is domiciled in the state of Texas.

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)(1) & (2), because this is the Judicial District in which Mr. Francis resides and because, as explained more

fully below, a substantial part of the events or omissions giving rise to the action occurred within this judicial district.

STATEMENT OF FACTS

6. Mr. Ferrari is a philanthropist, entrepreneur, business owner, and independent contractor with decades of experience valuing, buying, selling, managing, and investing in mineral interests, working interests, and royalty interests throughout the United States. In 2014, Mr. Ferrari founded Ferrari Energy, which focused on the acquisition of non-operating mineral leasehold interests. Mr. Ferrari is currently an independent contractor working with Phoenix Capital Group Holdings, LLC ("Phoenix").

7. Mr. Francis is the Chief Executive Officer ("CEO") of Incline Energy Partners, L.P. ("Incline"). Like Mr. Ferrari, Incline also purportedly specializes in the professional acquisition, management, and development of working, mineral, and overriding royalty interests. Incline claims it can provide landowners with quick, above-market offers, allowing them to liquidate complex assets within days.

8. Soon after Mr. Ferrari founded Ferrari Energy, Ferrari Energy began to out-compete Mr. Francis and Incline, finding opportunities faster, valuing interests more quickly, and ultimately offering more money to prospective sellers. Mr. Francis was furious. He quickly grew discontent with Mr. Ferrari's competition and began a highly targeted, vicious campaign of harassing and defaming Mr. Ferrari with the intention of damaging his personal and professional reputation.

A. Mr. Francis' Pattern and Practice of Publishing False Statements about Mr. Ferrari.

9. Mr. Francis' intentions to harm Mr. Ferrari soon became clear. On March 8, 2017, Mr. Francis plotted through email correspondence with a separate competitor to out-bid Mr. Ferrari in a mineral acquisition deal already in process between Mr. Ferrari and a mineral

owner. A true and correct copy of the March 8, 2017 email is attached as **Exhibit A**.

10. On information and belief, Mr. Francis has also anonymously transmitted packets of false and defamatory information to Mr. Ferrari's business associates and investment companies through the mail. Upon information and belief, Mr. Francis sent one of these packets on December 6, 2017, to GTCR, an investment company in Chicago, Illinois. A letter in this packet states that "Mr. Ferrari's reckless behavior and toxic company culture" had caused his company to be named as a Defendant in six lawsuits. This statement is untrue, and Mr. Ferrari disputes any allegation of reckless behavior and toxic company culture. A true and correct copy of this letter is attached as **Exhibit B**. Mr. Francis also, upon information and belief, anonymously sent an additional packet of slanderous and defamatory information to ANB Bank in Denver, Colorado in 2018 containing the same or substantially similar false statements.

11. The mail was not the only vessel by which Mr. Francis published defamatory and slanderous information about Mr. Ferrari. Upon information and belief, Mr. Francis created a website in 2018 – "lawsuitsoilandgas.com" – through which he anonymously publishes information about various lawsuits filed against Mr. Ferrari and companies with which he is affiliated. Mr. Francis has anonymously sent or caused to be sent hyperlinks to this website to various business associates of Mr. Ferrari and other industry professionals. This website includes a post entitled "Ghost Summary Adam Ferrari Lawsuits Due Diligence" which was published on July 19, 2021. This post includes the same information contained in an email referenced below in paragraph 19 and attached as **Exhibit F**. This post specifically states that Mr. Ferrari is a "convicted criminal" and that Mr. Ferrari is the CEO of Phoenix. These statements are false, as Mr. Ferrari has never been convicted of a crime and is not the CEO of Phoenix. These false statements were read by over 2,100 people according to the lawsuitoilandgas.com website.¹

¹ <https://lawsuitsoilandgas.com/adam-ferrari-lawsuits-oil-gas-due-diligence/>

12. Additionally, on November 14, 2018, Mr. Francis wrote an email to Eagle River Energy Advisors, a mineral interest brokerage, chastising the company for dealing with Mr. Ferrari and Ferrari Energy. Mr. Francis stated that there was "an entire website dedicated to tracking his lawsuits" referring to the website that, upon information and belief, he created. Mr. Francis then attempted to strongarm Eagle River by threatening to withhold \$325,000,000 of capital to acquire mineral rights in the "DJ & Williston Basins" where Eagle River operates unless they stopped doing business with Mr. Ferrari. A true and correct copy of this email is attached as **Exhibit C**.

13. On November 27, 2018, upon information and belief, Mr. Francis further caused Bryan Hymer, an employee of Mr. Francis, to send a mineral rights owner an email with a link to lawsuitsoilandgas.com and stated that Mr. Ferrari was involved in over six lawsuits to dissuade the mineral owner from doing business with Mr. Ferrari. A true and correct copy of the November 27, 2018 email is attached as **Exhibit D**.

14. Additionally, upon information and belief, Mr. Francis contributed false or misleading information throughout 2019 to the Greeley Tribune, a Colorado-based newspaper, that it then ultimately relied on to publish various articles smearing Mr. Ferrari and his company. Upon information and belief, Mr. Francis used the Greeley Tribune as yet another vessel to spread false or misleading information regarding Mr. Ferrari in an effort to harm Mr. Ferrari and to compete against Mr. Ferrari's company.

15. Even in his personal life, Mr. Ferrari cannot escape Mr. Francis' smear campaigns. As an example, in 2020 Mr. Francis published a comment on Mr. Ferrari's personal website for the public to see, stating in part "pretty sad that you're basically admitting that you tried to steal a sick old lady's minerals. Then again, that's your business model, so shouldn't be too surprised there." This statement is, of course, untrue. Mr. Ferrari never tried to steal minerals from any person. A true and correct copy of the website comments are attached as **Exhibit E**.

16. Upon information and belief, Mr. Francis again in 2020 commented anonymously on Mr. Ferrari's website, this time under the username "Adam ferrari" and using the email address "criminal@gmail.com." See **Exhibit E**. These comments falsely state that Mr. Ferrari is "a thief and a criminal" and "a master con artist [sic]." Mr. Ferrari has not been convicted of any crimes, nor is there any reason to label Mr. Ferrari as a "thief," "criminal" or "a master con artist [sic]."

17. Mr. Francis, upon information and belief, created yet another website in 2021 – "adamferrarioilandgaslawsuits.com" – to disparage and defame Mr. Ferrari, through which he anonymously published information regarding lawsuits involving Mr. Ferrari and companies that he was affiliated with. Mr. Ferrari suspects, based on Mr. Francis' past conduct, that Mr. Francis has distributed hyperlinks to this website to various business associates of Mr. Ferrari along with other industry professionals.

18. Upon information and belief, Mr. Francis also created multiple anonymous email accounts through which he has transmitted defamatory information about Mr. Ferrari to Mr. Ferrari's business associates, mineral rights sellers, and industry executives, falsely claiming that Mr. Ferrari was a convicted felon.

19. For example, upon information and belief, Mr. Francis, using one of his anonymous email accounts, sent an email on January 7, 2021, to executives of Hess, ExxonMobil, and other industry-leading oil and gas operators, alleging, among other things, that Mr. Ferrari was a "convicted criminal" in bold typeface. The email also contained false claims that Mr. Ferrari was the CEO of Phoenix, which is untrue, and that Phoenix was violating SEC laws. A true and correct copy of the January 7, 2021 email is attached as **Exhibit F**.

20. Mr. Francis intentionally sent this email to spread false and defamatory information to several energy industry players, stating "I mention all of this, as I don't believe it's widely known in the Bakken/Williston Basin community as to Mr. Ferrari's association with Phoenix..." and

generally discouraged Hess from working with Mr. Ferrari. This email also included a hyperlink to the website allegedly created by Mr. Francis discussed in paragraph 11 above.

21. While Mr. Francis tried to cover up his misdeeds by using an anonymous email account – "concernedbakkenmineralowner@gmail.com" – his efforts to hide his identity ultimately failed. On information and belief, Mr. Francis attached an electronic file with exhibits to the email. Exhibit 12 to the email is a PDF version of a transcript page of a deposition that Mr. Ferrari gave in a previous lawsuit in which Mr. Francis was a party. The metadata of Exhibit 12 reveals its author to be "fran6359."

22. Continuing his malicious campaign, and on June 17, 2021, Mr. Francis also emailed Crystal Taylor, an individual who was in the process of closing a real estate transaction with Phoenix. Despite the fact that Mr. Ferrari has never acted as the CEO of Phoenix, Mr. Francis continued his pattern of disparagement against Mr. Ferrari, stating "I would love nothing more than to defend my company's track record versus the misdeeds that Phoenix/Ferrari has performed over the years. Namely, the fact that their CEO was arrested and convicted for forging a mineral owner's signature in order to defraud her of hundreds of thousands of dollars." A true and correct copy of this email is attached as **Exhibit G**.

23. Mr. Francis sent this email in order to interfere with Phoenix's business, hoping to thwart a transaction by defaming Mr. Ferrari's professional reputation. Mr. Ferrari is not and never has been the CEO of Phoenix, nor has he ever been convicted of any crimes. However, Mr. Francis did not let the truth get in the way of his relentless campaign against Mr. Ferrari. **See Exhibit G.**

B. Mr. Francis' Most Recent Publications of False Statements about Mr. Ferrari Forming the Basis of this Suit.

24. Mr. Ferrari can no longer sit by and suffer the damages inflicted upon his business and reputation by Mr. Francis. Mr. Francis' continued publication of false and defamatory statements has made this suit necessary.

25. In approximately 2021 or 2022, upon information and belief, Mr. Francis sent one of his slanderous packets to First International Bank and Trust ("FIBT") in order to further disparage Mr. Ferrari and damage relations between Mr. Ferrari and potential investors. Based on information and belief, as well as Mr. Francis' pattern and practice of publishing false statements against Mr. Ferrari, Mr. Francis published false statements to FIBT, including that Mr. Ferrari was a felon, was acting as the CEO of Phoenix, and was defrauding mineral owners and investors. These allegations are false. Mr. Ferrari has never been convicted of a felony, never acted as the CEO of Phoenix, and has never defrauded mineral owners and investors.

26. Mr. Francis' harmful acts continued further into 2022. On February 28, 2022, upon information and belief and based on Mr. Francis' prior pattern of activity, Mr. Francis published false and disparaging statements about Mr. Ferrari to Dalmore Capital ("Dalmore"), an investment group that Phoenix had engaged with and hired. Specifically, on information and belief, Mr. Francis sent a packet of information to Dalmore claiming that Mr. Ferrari was a convicted felon and was the CEO of Phoenix. Mr. Francis also claimed that Phoenix was breaking rules and regulations promulgated by the Securities and Exchange Commission ("SEC") by employing Mr. Ferrari as its CEO because of the false allegation that Mr. Ferrari is a convicted felon. These statements are false. Mr. Ferrari has never been convicted of a crime and has never served as the CEO of Phoenix. These false statements published by Mr. Francis prompted Dalmore to conduct an investigation into its relationship with Phoenix and Mr. Ferrari, tarnishing Mr. Ferrari's reputation and putting the professional relationship between Mr. Ferrari and Dalmore at risk.

27. Mr. Ferrari and Phoenix were first made aware of these false statements when the Chair of Dalmore Group, Etan Butler, called Mr. Ferrari to discuss the allegations in the packet published, based on information and belief, by Mr. Francis. During this call, Mr. Butler stated that it was "pretty clear" the information was sent by "a competitor." Mr. Butler's subsequent questions

to Mr. Ferrari, along with Mr. Francis' pattern and practice of publishing false statements about Mr. Ferrari, lead Mr. Ferrari to the conclusion that the false statements published to Dalmore were published by Mr. Francis. The false and misleading information published to Dalmore, discussed more thoroughly in paragraph 26 above, matches the telltale traits of Mr. Francis' prior defamatory communications described in the preceding paragraphs.

28. Later, on October 10, 2022, Mr. Francis, upon information and belief, sent an anonymous packet containing information and allegations similar to those that Mr. Francis has transmitted to others in the past to 4 GRLZ Investments, LLC ("4 GRLZ Investments"), a Wyoming oil and gas investment company. The packet includes a letter identifying the sender as "A Concerned Colorado, North Dakota and Wyoming Interest Owner." The obfuscated identity of the sender is strikingly similar to the email address "concernedbakkenmineralowner@gmail.com" that Mr. Francis used in his communication to Hess as described in paragraphs 19, 20, and 21 above.

29. The letter in this packet again falsely alleges that Mr. Ferrari is the CEO and managing partner of Phoenix, and that "Mr. Ferrari and his groups" had been "blacklisted" in Colorado and had taken their "fraudulent business up to Wyoming and North Dakota...in an attempt to continue to defraud mineral owners out of their property and money." The letter further states that Mr. Ferrari "discretely organized" Phoenix, and that Phoenix is Mr. Ferrari's "latest oil and gas scam against interest owners" and other investors. This is false. Mr. Ferrari did not organize Phoenix, nor is Mr. Ferrari scamming interest owners. In the next sentence the letter goes on to state that a "prominent oil and gas company" had "quietly" filed a lawsuit against Phoenix "in an attempt to end their scams, along with Adam Ferrari's dealings in the industry." The letter is apparently referring to a lawsuit pending in Dallas County, Texas involving Mr. Francis, Incline, and Phoenix. That lawsuit, which does not name Mr. Ferrari as a party despite the false allegation

that the lawsuit is attempting to end Mr. Ferrari's involvement in the oil and gas industry, was filed on June 15, 2022 by Phoenix against Mr. Francis and Incline. The packet was sent on October 10, 2022, as evidenced by the date of the letter included within it. The overlapping timeframe of this lawsuit, directly involving Mr. Francis and his company, and the date that this letter and packet containing these false statements and allegations was published to 4 GRLZ Investments is not merely a coincidence.

30. In addition to the letter, the packet sent to 4 GRLZ Investments by, on information and belief, Mr. Francis included cherry-picked newspaper articles concerning Mr. Ferrari's prior criminal charges in Colorado. What the articles do not include, however, is that Mr. Ferrari was not adjudicated guilty of any of the charges outlined within the articles. Rather, Mr. Ferrari successfully completed deferred adjudication and had the record of these charges sealed by court order in Colorado on May 16, 2022 – approximately five months prior to the packet being sent to 4 GRLZ Investments. The inclusion of these articles in the packet was misleading and intended to impute criminality onto Mr. Ferrari, when in fact Mr. Ferrari was not convicted of any crime. This is consistent with Mr. Francis' previous false statements that Mr. Ferrari is "a convicted criminal," which is blatantly false.

31. This letter and the remaining information and items in the packet were, on information and belief, sent by Mr. Francis in a devious effort to tarnish Mr. Ferrari's reputation and perpetuate falsehoods previously spread by Mr. Francis. The allegations contained in the letter and packet sent by Mr. Francis to 4 GRLZ Investments, are false, defamatory, and misleading, which is on par with Mr. Francis' pattern and practice of making false and disparaging statements about Mr. Ferrari outlined in the preceding paragraphs. A true and correct copy of this letter is attached as **Exhibit H**.

32. Mr. Francis has also published false statements similar to those described above to

government agencies in an effort to force government scrutiny upon Mr. Ferrari and Phoenix. Most recently, in mid-2022, based on information and belief, Mr. Francis published false information to the Financial Industry Regulatory Authority ("FINRA"), "a government-authorized non-for-profit organization that oversees U.S. broker-dealers."² Mr. Francis' allegations published to FINRA match his pattern and practice of publishing false information. Mr. Francis stated that Mr. Ferrari is a convicted felon, acts as the CEO of Phoenix, and actively defrauds mineral owners and industry investors. These statements, as repeatedly clarified above, are false. Mr. Ferrari has never been convicted of a crime. Mr. Ferrari is not now, nor has he ever been, the CEO of Phoenix. Additionally, Mr. Ferrari has never defrauded any mineral owner or industry investor.

33. As shown above, Mr. Francis has acted with malicious intent to harm Mr. Ferrari's personal and professional reputation with the goal of eliminating Mr. Ferrari's participation in the oil and gas industry.

CAUSE OF ACTION

DEFAMATION, LIBEL, & SLANDER

34. Mr. Ferrari re-pleads and incorporates the preceding paragraphs set forth above.

35. Mr. Ferrari is an individual that is professionally engaged in the oil and gas industry, including acting as a philanthropist, entrepreneur, business owner, and independent contractor. Mr. Francis repeatedly defamed Mr. Ferrari by intentionally and knowingly publishing falsehoods to third parties, namely Mr. Francis' publication to FIBT in approximately 2021 or 2022, his February 28, 2022, publication to Dalmore, his October 10, 2022, publication to 4 GRLZ Investments, and his publication to FINRA in mid-2022. Upon information and belief, and with the benefit of discovery, Mr. Ferrari expects to find additional publications by Mr. Francis

² See FINRA's website at <https://www.finra.org/about#:~:text=FINRA%20Utility%20Menu,-What%20We%20Do&text=To%20protect%20investors%20and%20ensure,in%20the%20market%20with%20confidence>.

following his pattern of defamation and bad acts.

36. As stated in paragraph 25 above, upon information and belief, Mr. Francis sent one of his slanderous packets to FIBT in order to further disparage Mr. Ferrari and damage relations between Mr. Ferrari and potential investors. Based on information and belief, as well as Mr. Francis' pattern and practice of publishing false statements against Mr. Ferrari, Mr. Francis published false statements to FIBT, including that Mr. Ferrari was a felon, was acting as the CEO of Phoenix, and was defrauding mineral owners and investors. These allegations are false. Mr. Ferrari has never been convicted of a felony, never acted as the CEO of Phoenix, and has never defrauded mineral owners and investors.

37. Mr. Francis, based on information and belief, defamed Mr. Ferrari by intentionally and knowingly publishing falsehoods to Dalmore on February 28, 2022. Mr. Francis falsely stated to Dalmore that Mr. Ferrari was a felon, is the CEO of Phoenix, and was violating or had violated SEC rules and regulations. This publication of falsehoods is within the pattern and practice of Mr. Francis' prior defamatory publications listed in paragraphs 9 through 23 of this Amended Complaint. A more detailed description of Mr. Francis' false publication to Dalmore has been made in paragraphs 26 and 27 above. Mr. Francis knew at the time of the publication that his statements were false and would damage Mr. Ferrari. Mr. Francis published the defamatory statement with malice and the intent to harm Mr. Ferrari.

38. Mr. Francis further defamed Mr. Ferrari by intentionally and knowingly publishing falsehoods to 4 GRLZ Investments on October 10, 2022. This publication of falsehoods is within the pattern and practice of Mr. Francis' prior defamatory publications listed in paragraphs 9 through 23 of this Amended Complaint. A more detailed description of Mr. Francis' false publication to 4 GRLZ Investments has been made in paragraphs 28 through 31 above. Mr. Francis knew at the time of the publication that his statements were false and would damage Mr. Ferrari. Mr. Francis

published the defamatory statements with malice and the intent to harm Mr. Ferrari.

39. Mr. Francis further defamed Mr. Ferrari by intentionally and knowingly publishing falsehoods to FINRA. Mr. Francis falsely stated to FINRA that Mr. Ferrari is a felon, is the CEO of Phoenix, and was violating or had violated SEC rules and regulations. A more detailed description of Mr. Francis' false publication to FINRA has been made in paragraph 32 above. Mr. Francis' publication was designed to induce unwarranted governmental scrutiny on Mr. Ferrari and Phoenix and has resulted in an unjustified, unnecessary, and unreasonable investigation of Mr. Ferrari and Phoenix by FINRA. Mr. Francis knew at the time of the publication that his statements were false and would damage Mr. Ferrari. Mr. Francis published the defamatory statements with malice and the intent to harm Mr. Ferrari.

40. Upon information and belief, and with the benefit of discovery, Mr. Ferrari expects to find additional publications by Mr. Francis following his pattern of defamation and bad acts.

41. Mr. Francis' statements and publications to FIBT, Dalmore, 4 GRLZ Investments, and FINRA are reasonably calculated to harm Mr. Ferrari's reputation and expose him to public contempt or ridicule and/or financial injury. Mr. Francis' statements are further reasonably calculated to harm Mr. Ferrari's reputation, honesty, integrity, and virtue. Additionally, Mr. Francis' allegations that Mr. Ferrari is a "convicted criminal" have wrongfully charged Mr. Ferrari with the commission of a crime.

42. Mr. Ferrari has suffered actual damages as a result of Mr. Francis' ruthless business practices, including the defamatory statements published about Mr. Ferrari. Mr. Ferrari's personal and business reputation has been harmed by Mr. Francis' defamatory statements. Furthermore, Mr. Ferrari has suffered mental anguish damages as a result of Mr. Francis' tortious conduct.

EXEMPLARY DAMAGES

43. Mr. Ferrari re-pleads and incorporates the preceding paragraphs set forth above.

44. Mr. Francis' conduct complained of herein was intentional, with malice, with conscious indifference to Mr. Ferrari's rights, and with a specific intent to cause serious harm and substantial injury to Mr. Ferrari. Mr. Francis was consciously indifferent to the harm he caused Mr. Ferrari. Based on the foregoing, Plaintiff is entitled to and seeks to recover exemplary damages against Defendant in an amount to be determined by the trier of fact.

JURY DEMAND

45. Mr. Ferrari requests a trial by jury on all of his causes of action.

PRAYER FOR RELIEF

WHEREFORE, Adam Ferrari respectfully that the Court enter judgment awarding him the following relief:

- a. Actual damages;
- b. Consequential damages;
- c. Compensatory and/or special damages;
- d. Exemplary damages;
- e. All costs of court, and pre-judgment and post-judgment interest at the highest rate permitted by law;
- f. Permanent injunctive relief; and
- g. All other relief to which he is entitled.

April 13, 2023

Respectfully submitted,

CHAMPION LLP

/s/ Austin Champion

Austin Champion

Texas Bar No. 24065030

Austin.Champion@championllp.com

Andrew D. Gray

Texas Bar No. 24110756

Andrew.Gray@championllp.com

2200 Ross Avenue, Suite 4500W

Dallas, Texas. 75201

214-225-8880 | Direct

214-225-8881 | Fax

COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via the CM/ECF Court Filing System in accordance with the Federal Rules of Civil Procedure and the Local Rules on April 13, 2023.

/s/ Austin Champion

Austin Champion